

CCRB INVESTIGATIVE RECOMMENDATION

Investigator: Chelsea Yogerst	Team: Squad #11	CCRB Case #: 201508130	<input checked="" type="checkbox"/> Force	<input checked="" type="checkbox"/> Discourt.	<input type="checkbox"/> U.S.
			<input type="checkbox"/> Abuse	<input type="checkbox"/> O.L.	<input type="checkbox"/> Injury
Incident Date(s) Tuesday, 09/15/2015 1:25 PM	Location of Incident: 8 Avenue and West 131 Street	Precinct: 32	18 Mo. SOL 3/15/2017	EO SOL 3/15/2017	
Date/Time CV Reported Tue, 09/15/2015 5:06 PM	CV Reported At: IAB	How CV Reported: Phone	Date/Time Received at CCRB Fri, 09/25/2015 11:09 AM		

Complainant/Victim	Type	Home Address

Witness(es)	Home Address

Subject Officer(s)	Shield	TaxID	Command
1. POM Jean Francisco	12654	950438	PSA 6
2. POM Edwin Aguilar	17601	942930	PSA 6
3. SGT Raymond Sette	5269	947484	PSA 6

Witness Officer(s)	Shield No	Tax No	Cmd Name
1. POF Melissa Veliz	12807	948713	PSA 6
2. POM Richard Suarino	23186	946301	PSA 6

Officer(s)	Allegation	Investigator Recommendation
A.POM Jean Francisco	Force: PO Jean Francisco used physical force against § 87(2)(b)	
B.SGT Raymond Sette	Force: Sgt. Raymond Sette used physical force against § 87(2)(b)	
C.POM Edwin Aguilar	Force: PO Edwin Aguilar used physical force against § 87(2)(b)	
D.POM Jean Francisco	Discourtesy: PO Jean Francisco acted discourteously toward § 87(2)(b)	

Case Summary

On September 15, 2015, at approximately 1:25 p.m., § 87(2)(b) was smoking a Black and Mild Cigar on 8th Avenue and West 131 Street in Manhattan, when PO Jean Francisco, PO Edwin Aguilar and Sgt. Raymond Sette, all of PSA-6, exited an unmarked van and approached him. PO Francisco grabbed § 87(2)(b) and bent him over the hood of a vehicle and § 87(2)(b) was handcuffed. PO Aguilar and Sgt. Sette grabbed his arms and pulled § 87(2)(b) in an attempt to move him to the van. However, § 87(2)(b) back problems caused him to fall to the ground. All three officers attempted to get § 87(2)(b) up again by picking up his legs and arms but allegedly dropped him, causing his face to make contact with the ground, because of his weight (**Allegations A, B and C**). PO Francisco allegedly threw § 87(2)(b) cane into the van (**Allegation D**). § 87(2)(b) was arrested for § 87(2)(b)

§ 87(2)(b). His criminal case is ongoing and he is next scheduled to appear in court on § 87(2)(b).

There is no video evidence for this case.

Mediation, Civil and Criminal Histories

- This case was not eligible for mediation because of § 87(2)(b) arrest.
- § 87(2)(b) did not file a notice of claim (**Board Review 17**).
- According to OCA, § 87(2)(b) has not been convicted of any crimes (**Board Review 13**).

Civilian and Officers CCRB Histories

- § 87(2)(b)
- PO Francisco has been a member of the service for 4 years and has four previous CCRB complaints, including the one § 87(2)(b) filed and was uncooperative.
- PO Aguilar has been a member of the service for 8 years and has two previous CCRB complaints. In case 201204689, stop and question allegations were substantiated and the Board recommended charges; the NYPD declined to prosecute and took no disciplinary action.
- Sgt. Sette has been a member of the service for 7 years and has one previous CCRB complaints.

Findings and Recommendations

Allegations not Pleaded

- **Stop and Search** § 87(2)(b) stated that when the officers approached him, he was immediately grabbed, restricting his freedom of movement. Once he was apprehended, officers searched his pockets at the scene and also at the hospital. § 87(2)(g)

- **Strip Search** § 87(2)(b) stated that when he was in the hospital, he went to the bathroom, and when he finished urinating, PO Suarino asked what he was doing and searched inside his underwear, which § 87(2)(b) confirmed was not exposed beyond where he had originally unbuckled his own pants, which remained at his waistband. § 87(2)(g)

Recommendations

Allegation A-Force: PO Jean Francisco used physical force against § 87(2)(b)

Allegation B- Force: Sgt. Raymond Sette used physical force against § 87(2)(b)

Allegation C-Force: PO Edwin Aguilar used physical force against § 87(2)(b)

It is undisputed that while the officers escorted § 87(2)(b) to the van, he ended up on the ground and that he weighs almost 300 pounds.

§ 87(2)(b) stated that once PO Francisco exited the van, he grabbed § 87(2)(b) and bent him face-forward over the front hood of a vehicle. He did not know who put him in handcuffs. § 87(2)(b) had a pre-existing back problem, so when PO Aguilar and Sgt. Sette tried to escort § 87(2)(b) to the van, he initially fell, which caused his buttock to make contact with the ground. The officers attempted to pick him up so that they could put him in the van, but realized that he was too heavy. When § 87(2)(b) told the officers that he goes to therapy for his back and could not sit up because his back was hurting, the officers did not respond and attempted to get him up again by his legs and arms. In the process, the officers dropped § 87(2)(b) because he was too heavy, causing his face to make contact with the ground. § 87(2)(b) was transported to Harlem Hospital from the scene because he had pain in his shoulder and back. It was determined after an X-ray that § 87(2)(b) did not break any bones and he was given pain medication for his injuries (**Board Review 23**).

Medical records show that on § 87(2)(b), § 87(2)(b) went to § 87(2)(b) to complain of a lower back injury that was triggered by an assault that occurred on April 19, 2015 and exacerbated after he was dragged and dropped on the floor while he was being arrested on September 15, 2015. § 87(2)(b) received an X-ray on his back but did not have any fractures or dislocations. He was instructed to follow up with physical therapy two times a week for four weeks for his lower back pain. The medical records noted that he is morbidly obese (**see Blue Medical Records File**).

PO Francisco testified that § 87(2)(b) was standing when he was handcuffed. PO Aguilar first attempted to handcuff § 87(2)(b) who stiffened his arms and refused to put them behind his back, PO Francisco assisted PO Aguilar by grabbing and putting both of § 87(2)(b) wrists together. PO Francisco was able to put one handcuff on § 87(2)(b) and Sgt. Sette was able to put the other handcuff on him. While § 87(2)(b) was being escorted to the van, he went limp, dropped his weight to the ground and refused to walk. § 87(2)(b)'s knees were the first body part to make contact with the ground and he landed on his side. While on the ground, § 87(2)(b) continuously tried to roll over onto his stomach, but Sgt. Sette put his hands on § 87(2)(b)'s shoulders to prevent him from doing so because they did not want him to choke. PO Francisco denied that he or his partners dropped § 87(2)(b) onto the ground or attempted to pick up him by his arms or legs (**Board Review 22**).

Sgt. Sette stated that PO Francisco initially grabbed § 87(2)(b) hands and handcuffed him with his assistance within thirty seconds. PO Aguilar stated that it took him and Sgt. Sette a few minutes to handcuff § 87(2)(b) and that PO Francisco was not involved. Both Sgt. Sette and

PO Aguilar stated that they tried to pick § 87(2)(b) up by his arms and legs after § 87(2)(b) initially dropped his weight, but were unsuccessful in doing so because he was too heavy. Sgt. Sette denied that § 87(2)(b) was dropped to the ground and stated that he was guided onto the ground so that he was seated on his buttock. Once he was seated, § 87(2)(b) continued to lean over onto his left arm (**Board Review 21 and 20**). PO Suarino arrived at the scene after § 87(2)(b) was apprehended and denied witnessing any of the alleged force (**Board Review 19**).

§ 87(2)(g)

Allegation D-Abuse of Authority: PO Jean Francisco acted rudely toward § 87(2)(b)

§ 87(2)(b) stated that he walks with a cane because of a prior back injury and because he is overweight. During the incident, § 87(2)(b) cane lay next to him and when he explained to the officers that he could not walk without his cane, PO Francisco threw his cane into the van.

PO Francisco testified that § 87(2)(b) did have a cane held between his rib cage and his elbow when they initially approached him but the cane may have dropped during their interaction. PO Francisco did not recall seeing the cane other than when he initially approached and once he returned to the station house. He did not recall what happened to the cane, which officer removed the cane from the scene, or if he threw the cane into the van.

Sgt. Sette, PO Aguilar and PO Suarino denied seeing PO Francisco or any other officer throw § 87(2)(b) cane into the van.

§ 87(2)(g)

Squad: 11

Investigator: _____
Signature Print Date

Pod Leader: _____
Title/Signature Print Date

Attorney: _____
Title/Signature Print Date